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I. INTRODUCTION

Progressive lawyers face two obstacles: one internal and the other external. First, the dominant ideology and practice of law seduces and subverts us internally. Second, our opponents have more money, which creates external challenges. However, throughout history "guerrilla" lawyers, professors, law students, and legal workers have overcome these obstacles. By staying true to the principles and dreams that brought us into the legal arena, we have found meaning, and even joy, in our work lives. This article introduces guerrilla lawyering and then details how to approach this type of lawyering through demystification, empathy, and building power. Finally, the article emphasizes the need for guerrilla lawyering in light of the November 2004 elections.

Guerrilla lawyering grows out of the same realities faced by guerrillas fighting for national liberation or revolutionary change. In every society there is a dominant ideology that holds sway over the people. The dominant ideology dictates that the status quo is unchangeable, a product of "God's plan" or "the natural order" or "civilization." The corresponding dominant legal philosophy is that the law expresses eternal, fixed principles. This dominant approach posits that law is objective and stands above class, race, and gender and that judges rationally follow precedent. As a California appellate justice once said, "One of our guiding principles in this courtroom, indeed in every courtroom, is that race, creed, color, religion, national origin, none of these things count for or against anybody. These are neutral factors."[2]

However, just as the guerrilla theorist must criticize and expose the dominant (hegemonic) ruling ideology, the guerrilla lawyer must also

expose the dominant approach to the law. Guerrilla lawyers must write, publish, teach, and speak for an alternative vision of law and society. Therefore, an important principle of guerrilla law is demystifying the law.

II. PIERCING THE VEIL

Demystification is done on two fronts. One method consists of writing articles and creating dialogue primarily within the legal community. Critical legal studies, critical race theory, and feminist critiques have created an entire body of available work that did not exist when this author passed through law school. Significant steps have taken place to demystify the law through written discourse. For example, West Publishing Company now publishes an actual casebook compiling many of these works.[3] The articles in this casebook explain how the law both legitimizes existing power relations and supports societal institutions.[4] This casebook also includes many excerpts showing practical applications of alternative law philosophy.[5] Students should organize to have a social justice class that uses this textbook.[6]

The second method to demystify the dominant legal approach is through lawyers' relationships with groups and individual clients. My trial practice professor, a well-known personal injury defense lawyer, said, "A lawyer should never explain the case to a client. Because he will either not understand and waste your time (time is money) with irrelevant questions or will understand and question why he is being charged so much for something so simple."

Guerrilla lawyers must reject this arrogant, elitist practice of law, which keeps our clients powerless. Unfortunately, to do so is harder than one might think. The dynamics of practice, with the economic stresses and time pressures, push us *not* to fully discuss the case with our clients. Therefore, we must have a conscious policy of demystification. We must have a policy that is supported and adhered to by our law partners.

Lawyers are similar to doctors in that people come to us in a crisis and need our professional skills. Like doctors, we are trained to separate the person into individual compartments, focusing only on the specific legal (or physical) problem we deem relevant. This moving passage from *Memoirs of a Woman Doctor,*[7] by Nawal El Saadawi, illuminates the limitations of traditional doctoring and the potential for positive change:

> How had I been able to examine patients in the past? How had my teachers led me to believe that a sick person was nothing more than a liver, a spleen or a collection of guts and entrails? How had they made me look into people's eyes, shine my light into them, turn up the lids with my fingers, without noticing their freshness and innocence? How had they made me look down people's throats without hearing their cries of pain? I shuddered. For the first time in my life I was seeing the patient as a whole person, not a loose assemblage of discrete parts. The weariness and sickness of the old man's eyes were getting through to me and his cries were crossing the gap between my ears and my heart. . . . I cried as I had never cried before, as if my eyes had never known what it was to cry. Stinging tears, always held back before, rained down my cheeks in a stormy torrent and I made no attempt to curb them. Let them come for all they were worth to wash my mind clean of its accumulated dust, to dislodge the dark veil that was insulating my heart, and to set my soul free from the prison cell of deadly rigidity where it languished![8]

Like Dr. El Saadawi, guerrilla lawyers need to see the client as a whole person. When we truly listen to our clients and reach out to them, we shed the vestments of privilege and overcome the cynicism caused by overwhelming caseloads and unprincipled judicial decisions.

III. BUILDING POWER

Just as guerrillas join with the people they fight for and with, the guerrilla lawyer should immerse herself in the intellectual and physical environment of her clients. What do the following people have in common: Judah Maccabee in the hills of Judea in 170 BC; Mao Zedong in the caves of

Shaanxi, China, in 1934; Fidel Castro in the Sierra Maestras in Cuba in 1957; and Ho Chi Minh in the jungles of Vietnam in 1963? All of them knew that without the support of the people, their guerrilla war would fail. Mao, who for all his faults led the most important peasant revolution in history, believed that "the guerrilla is the fish that swims in the ocean of the people."[9]

In order to achieve the objective of reaching out to clients, we especially need to work with organizations of people. Corporations rely on in-house counsel to help them traverse and use the legal system; the progressive lawyer can play an analogous role in the movement for social change.

There are numerous opportunities to offer our legal skills as we participate in community and political struggles. For example, the Palestinian student group at a state university was put on probation for allegedly improper behavior during an on-campus pro-Israel rally.[10] A lawyer volunteered to be the group's in-house counsel and coordinated the defense of the two students who had to go to disciplinary hearings. She prepared appeal letters to the university deans. She facilitated a meeting between the president of the university and representatives from the Palestinian group. She filed charges of discriminatory enforcement with the U.S. Department of Education. She challenged the powerful pro-Israeli media machine by contacting local and national papers and presenting the actual facts of what took place at the demonstration. And, most importantly, she took part in the group's meetings and counseled them on how to have events, rallies, and counterdemonstrations without violating their probationary status. The attorney's work strengthened the organization and educated its members so that in the future they would be able to deal with legal problems when no lawyers were available.

In another example, Rick Wagner, an overworked legal services attorney, sat in his office in Brooklyn[11] and listened to a strong, proud woman describe the conditions in the Noble Drew Ali Plaza housing project in Brownsville:[12]

> Three hundred seventy-five African American families and eight Hispanic families reside there. The project was owned by three white men (Linden Realty), who hired an all-white group of on-site managers. The project was subsidized by the federal government, and rents were set by the government at fair market rates of $650 per month for a one-bedroom to $950 for a four-bedroom apartment. Each family paid 30 percent of its adjusted gross income, and the rest was paid by the federal subsidy.[13]

During the seven years in which this virtually all-black project was run by an all-white group, conditions deteriorated to the point where living there became an environmental nightmare.[14] All the tenants suffered freezing cold temperatures in the winter, sewage backup with a persistent nauseating stench that invaded their homes, water leaks, inadequate security, broken fixtures, and management indifference.[15] As the tenant would state in her affidavit, "If we were criminals and lived in a penitentiary, the way we live would be considered cruel and unusual punishment."[16]

Wagner, wearing a solidarity ring given to him by North Vietnamese guerrilla fighters, inspected the projects and used his antiwar experience to help the tenants organize.[17] Wagner understood a basic rule of guerrilla lawyering: we must develop our legal skills to their highest degree. Japan's most famous samurai, Miyamoto Musashi, wrote that "you can become a master of strategy by training . . . and come to appreciate how to apply strategy to beat ten thousand enemies."[18]

Wagner took this quote to heart. He fashioned an expanded version of the RICO statutes in order to file a lawsuit against the landlords.[19] Eventually, the Second Circuit struck down his legal theory.[20] But, as often happens when clients are organized and supported by creative lawyering, there were other significant victories. The exploitive landlords were relieved of ownership, HUD put in millions of dollars for repair, and title was transferred to a community-based nonprofit organization.[21] After additional lawsuits were filed, two other projects, the Medgar Evers Houses

and Betty Shabazz Apartments, were transferred to nonprofit community groups and today tenants are fully represented on the board of directors.[22]

Wagner and Brooklyn Legal Services have now set their sights on predatory lenders and have, once again, brought creative lawsuits to challenge money, power, and social injustice.[23]

IV. EMPATHY

Earlier I referred to the internal obstacles we face in trying to practice a progressive form of law. One impediment is that lawyers are motivated by sympathy instead of empathy. Sympathy is the inclination to help another person, whereas empathy is the identification with the character and experiences of another person. To be emphatic, we must understand the life experiences and realities of our clients. The Jewish lawyer who worked with the Palestinian students and the white legal services attorney, Rick Wagner, who represented the African American tenants were transformed by those experiences. Che Guevara emphasized the transformative effect on the middle-class lawyers, doctors, and students who bonded with the *campesinos* during the Cuban revolution:

> [T]he men who arrive in Havana after two years of arduous struggle in the mountains and plains of Oriente, in the plains of Camagüey, and in the mountains, plains, and cities of Las Vilas, are not the same men, ideologically, who landed on the beaches of Las Coloradas, or who took part in the first phase of the struggle. Their distrust of the campesino has been converted into affection and respect for his virtues; their total ignorance of life in the country has been converted into a knowledge of the needs of our guajiros; their flirtations with statistics and with theory have been fixed by the cement which is practice."[24]

It was because of this bonding with their "clients" that these guerrilla leaders did not stop at democratic reform but rather pushed through agrarian reform and commenced a total social and economic revolution.

As we become connected to community groups and movements (small or large), our legal work becomes more effective. As we demystify the law and teach people legal skills, we empower them. This creates long-lasting social and personal changes, which outlive our individual cases.

V. PATIENCE

What do the following three lawyers have in common: the leader of a guerrilla armed force who sits in a prison cell on Robben Island in South Africa; a young criminal lawyer who continues to write one appellate brief after another for his incarcerated client; and an ex–legal services attorney who takes out second and third mortgages on his house to finance a massive sex discrimination suit against State Farm Insurance Company? All three understood the words of Italian Marxist theoretician Antonio Gramsci, written while suffering in a fascist prison, "pessimism of the intelligence, optimism of the will."[25] Gramsci was encouraging revolutionaries to realistically evaluate the overwhelming odds against them but to draw from their emotional strength to overcome the money and power of their adversaries.[26]

Nelson Mandela preached that patience is not a weakness; rather, it reflects a commitment to stay in the fight for the long haul.[27] After twenty-seven years in prison, he was freed to see the historical rewards of his patience.[28]

Dennis Riordan toiled for eleven years writing appellate briefs and federal habeas petitions, arguing at evidentiary hearings, researching new theories, writing new briefs, advocating at parole hearings—winning, losing, and finally securing the release and freedom of the wrongly convicted Black Panther, Johnny Spain.[29]

Guy Saperstein won a five-month trial against State Farm.[30] It took eight more years to obtain the first large installment payment.[31] Finally, after sixteen years, his clients received approximately $250 million (the largest recovery in the history of civil rights litigation at that time).[32]

VI. POSTELECTION BLUES

Guerrilla lawyering becomes more essential in times such as these when there is less space for liberal lawyering. With the November 2004 Republican victories in the House, Senate, and White House, we can make the following assumptions about the government's goals:

1. The appointment of one or two younger reactionary, activist new justices on the U.S. Supreme Court
2. The appointment of hundreds of ultraconservative judges nationwide in the federal courts[33]
3. Prosecutions and investigations under the Patriot Act expanded to non-Muslims, such as those participating in the growing antiwar movement, members of solidarity groups, and militant activists of all colors
4. Attempted cutbacks and privatization of social welfare programs
5. Continuing regulatory and legislative attacks on environmental protections

If these assumptions are correct, lawyers will be needed in every area of social, racial, gender, and economic conflict. One fertile arena of activity will be the battle for progressive legislation. In the face of Republican control of the legislative and the executive branches, activists will once again focus on passing progressive state and local legislation. Thus, they will need the information, legal analysis, and arguments that social justice lawyers are in an excellent position to provide.

Additional struggles will center on impact (test case) litigation because the reactionary changes in the federal courts mean less opportunity. Test case litigation uses the courts to advance the interests of minorities and to bring issues into the public discourse. It also begins to establish a record of resistance. There are two inherent weaknesses that guerrilla lawyers have always recognized in test case litigation. First, a shift in the judiciary means fewer victories. Second, often the people who are the beneficiaries of legal

rulings are not personally empowered. Therefore, when the lawyers and media leave, people and communities fall back into the powerless positions to which they are historically accustomed.

An illustration of the second limitation on test case litigation is found in two judicial opinions that grew out of high school activism of the 1960s. In 1965, upon becoming aware that a group of students were planning to wear black armbands to school in protest of the Vietnam War, the principals of that school adopted a policy requiring removal of the armbands. Any student who refused to remove the armband would be suspended. The U.S. Supreme Court held in *Tinker v. Des Moines Indep. Com. School District* that the First Amendment prohibited this school policy and that high school students could wear the armbands to school in protest.[34] In 1970 in California, three cases were joined in federal court attempting to protect the rights of high school students to receive political leaflets on campus and to publish and distribute an "underground" newspaper on campus. In those cases, a three-judge federal court issued a powerful opinion upholding student rights and striking down the California Education Codes, which had forbidden such "propaganda."[35] One of these cases, *O'Reilly,* granted the students at Mission High School the right to pass out leaflets.

Just one year after the *O'Reilly* decision, Latino students at the same Mission High School attempted to pass out leaflets in support of seven young men charged with killing a police officer.[36] Even though the school administration knew of the *O'Reilly* decision, the vice principal confiscated the leaflets and threatened the students with suspension. The students were part of an attempt to organize a political youth group at the school. The case they were supporting, *Los Siete de la Raza,*[37] was part of a community-wide effort against rampant police brutality. However, the students were politically inexperienced. They had never heard of the *O'Reilly* court opinion and did not know about the American Civil Liberties Union (ACLU). The only positive contacts they had with the law were the small

youth group meetings they had attended at the San Francisco Community Law Collective across the street from their high school.

During their lunch hour, they went to the Law Collective for help. They were scared and intimidated. A test case, resolved in their favor years later, would have been useless to their twin goals of developing student power at the school and of supporting the Los Siete defendants. However, the *Tinker* and *O'Reilly* decisions, combined with the availability of guerrilla lawyers, provided them with immediate leverage.

After several phone calls from the guerrilla lawyers at the Law Collective, the principal and vice principal walked across the street to the Law Collective. They apologized for the "misunderstanding," assured the lawyers that the students could pass out their leaflets, and exited, commenting about "outside agitators." As a result of this negotiation, the students had a new sense of their power to confront the school authorities. The students realized they could use the First Amendment as a weapon to help them change the power relationships in the school and in the Mission community.

It was no accident that the San Francisco Community Law Collective was located across from the high school. The Law Collective was organized based on the principles of guerrilla lawyering. It rented a storefront in a central geographical place in the community, acted as house counsel for community groups, and turned down lengthy test case litigation in order to be available to people politically organizing in that community. In this way, the Law Collective gave legal strength to people in motion; people confronting oppressive conditions; people exerting political power.

Guerrilla lawyering does not denigrate impact litigation. Both are necessary. The circumstances of people's lives can be dramatically improved by impact cases.[38] But often such cases are conceived of and controlled by the lawyers. When the cases are over, the plaintiffs have not learned how to organize themselves, nor have they internalized the concept and feeling that they have power. Therefore, it is essential to have public

interest lawyers and law students who work hand in hand with their clients as political equals. It is also necessary to have lawyers on the "street" to enforce, protect, and counsel people in their everyday struggles. Fighting on both fronts will help us combat the coming years of reactionary policies.

VII. CONCLUSION

Too many participants in the social movements of the 1960s retreated from progressive political activity when the revolution they expected did not happen. Lawyers also retreated, seduced by ego and money or battered by the painful burdens of life. Practicing guerrilla lawyering can be an antidote to quitting. In a world of heart-breaking violence and oppression, guerrilla lawyering will sustain lawyers and provide meaningful work. The essence of our practice is expressed by poet Adrienne Rich:

> My heart is torn by all I cannot
> save:
> So much has been destroyed
> I have to cast my lot with those
> who, age after age
> perversely, with no extraordinary
> power, reconstitute the world.[39]

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[1] Paul Harris received his J.D. from the University of California at Berkeley. He teaches Guerrilla Law at New College's public interest law school in San Francisco.

[2] People v. Taylor, 5 Cal. App. 4th 1299, 1310 (1992).

[3] *See* MARTHA MAHONEY ET AL., SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW: CASES AND MATERIALS (2003).

[4] *See id.*

[5] *See id.*

[6] Social justice classes using the West casebook have been established at Santa Clara University School of Law (Professor Stephanie Wildman), University of Miami Law School (Professor Martha Mahoney teaches the class as a first year elective), and the University of North Carolina Law School (Professor John Calmore). An article by Professor Wildman on the founding of Centers of Social Justice at law schools is due out

in a forthcoming issue of the Journal of Legal Education. *See* Stephanie Wildman, *Democracy & Social Justice: Founding Centers for Social Justice*, 55 J. LEGAL EDUC. (forthcoming Mar.–Jun. 2005).

[7] NAWAL EL SAADAWI, MEMOIRS OF A WOMAN DOCTOR (Catherine Cobham ed., City Lights Books 1989) (1988).

[8] *Id.* at 45–46.

[9] *See* Lester W. Grau, *The Soviet-Afghan War: A Superpower Mired in the Mountains*, 17 J. SLAVIC MIL. STUD. 129 (2004), *available at* http://www.smallwars.quantico.usmc.mil/search/LessonsLearned/afghanistan/miredinmount.asp (last visited Mar. 15, 2005).

[10] The following narrative is derived from the author's interview with the General Union of Palestine Students, San Francisco State University (June 2003).

[11] The following narrative is derived from the author's personal experience and book, BLACK RAGE CONFRONTS THE LAW 270–71 (1997).

[12] *Id.*

[13] *Id.* at 270.

[14] *Id.* at 271.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] MIYAMOTO MUSASHI, A BOOK OF FIVE RINGS: THE CLASSIC GUIDE TO STRATEGY 69–70 (Victor Harris trans., 1974).

[19] *See* Abbott v. Medgar Evers Houses Ass'n, No. 98-6275, 1999 WL 1204487 (2d Cir. N.Y. Nov. 16, 1999).

[20] *Id.* at *1–2. Recently, the Second Circuit revisited the legal theory put forward by Brooklyn Legal Services and this time approved it. *See* Ideal Steel Supply Corp. v. Anza, 373 F.3d 251 (2d Cir. 2004).

[21] Telephone Interview with Richard Wagner, Director of Litigation, Brooklyn Legal Services (Oct. 2004); Interview with Richard Wagner in San Francisco, Cal. (Dec. 2004).

[22] Telephone Interview with Richard Wagner, *supra* note 21; Interview with Richard Wagner, *supra* note 21.

[23] Telephone Interview with Richard Wagner, *supra* note 21; Interview with Richard Wagner, *supra* note 21.

[24] Ernesto Che Guevara, *Notes for the Study of the Ideology of the Cuban Revolution*, http://www.marxists.org/archive/guevara/1960/10/08.htm (last visited Feb. 25, 2005).

[25] ANTONIO GRAMSCI, 1 PRISON NOTEBOOKS 12 (Joseph A. Buttigieg ed. & trans., Columbia University Press 1992) (1975).

[26] *See* WALTER L. ADAMSON, HEGEMONY AND REVOLUTION: A STUDY OF ANTONIO GRAMSCI'S POLITICAL AND CULTURAL THEORY (1980); ROGER SIMON, GRAMSCI'S POLITICAL THOUGHT: AN INTRODUCTION (1982).

[27] *See* Andre Brink, *Nelson Mandela*, TIME MAG., Apr. 13, 1998, at 188.

[28] *See id*; *see also* NELSON MANDELA, LONG WALK TO FREEDOM 485 (1994).

[29] *See* LORI ANDREWS, BLACK POWER, WHITE BLOOD: THE LIFE AND TIMES OF JOHNNY SPAIN (1996); *see also* Paul Harris, *Book Review of* BLACK POWER, WHITE BLOOD, 1 NEW C. CAL. J. PUB. INT. L. 42, 47–49 (1998).

[30] *See* GUY SAPERSTEIN, CIVIL WARRIOR 295–355 (2003).
[31] *See id.*
[32] *See id.* at 345.
[33] It is estimated that by the end of his term Bush will have appointed almost half of the federal judiciary. Bush's previous appointments are the most conservative judges ever appointed by any modern President, including Nixon and Reagan. Carolyn Lochhead, *Impending War Over High Court Nominees: Ultraconservative Bush Choices Sure to Draw Filibusters*, S.F. CHRON., Nov. 14, 2004, at A1, A15.
[34] *See* Tinker v. Des Moines Indep. Com. Sch. Dist., 393 U.S. 503 (1969).
[35] In 1970, a three-judge federal court, relying on *Tinker*, held the California Education Code sections prohibiting the passing out of partisan and propaganda materials on school grounds to be unconstitutional. Rowe v. Campbell Union High Sch. Dist., No. 51060 (N.D. Cal. 1970) (on file with author); Zeltzer v. Campbell Union High Sch. Dist., No. 51501 (N.D. Cal. 1970) (on file with author); O'Reilly v. San Francisco Unified Sch. Dist. (N.D. Cal. 1970). *Rowe* and *Zeltzer* protected the right of high school students to pass out an underground newspaper. *O'Reilly* protected the rights of students at Mission High School to pass out leaflets.
[36] The following discussion and narrative about the students of Mission High School are derived from the personal experience of author.
[37] For background information on this case and the organization, see MARJORIE HEINS, STRICTLY GHETTO PROPERTY: THE STORY OF LOS SIETE 181–89 (1972).
[38] For example, see the memorandum opinion for *Lucero v. Detroit Public Schools*, No. 01-CV-72792-DT (E.D. Mich. Sep. 30, 2003), http://www.sugarlaw.org/info/BeardSchoolOpinionSept03.pdf (last visited Mar. 27, 2005). *Lucero* represents the first case where an environmental justice class action was able to proceed under the legal theory that building a school on a highly contaminated industrial waste site was in violation of Title VI regulations under the Civil Rights Act (42 U.S.C. § 1983). *Id.* The settlement is available at http://www.sugarlaw.org/info/LucerovDPS_Settlement.pdf (last visited Mar. 27, 2005).
[39] Adrienne Rich, *Affirmation #463*, *in* SINGING THE LIVING TRADITION (1993).